

(2024) 07 BOM CK 0045

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 420 2 Of 2024

Shivaji Nagar Cooperative
Housing Society Limited

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision: July 19, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 4, 6, 11, 18
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Section 11, 11A, 24(2), 24(1)(a)

Hon'ble Judges: Nitin W. Sambre, J; Abhay J. Mantri, J

Bench: Division Bench

Advocate: N.H. Shams, H.R. Dhumale, Vandan Gadkari

Final Decision: Dismissed

Judgement

N. W. Sambre, J

1. RULE. Rule made returnable forthwith and the writ petition is heard with consent of the learned counsel for the parties at length.

2. Petitioner-Shivaji Nagar Cooperative Housing Society Limited (for short, 'the petitioner-Society'), claims to have purchased Field Survey No.112/6, Patwari Halka No.17, admeasuring 89 Are of Mouza Chikhli Deosthan, District Nagpur as can be demonstrated from Annexure-1. After notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act of 1894) issued in relation to acquisition of the said land for public purpose, an award came to be passed by the Land Acquisition Officer on August 25, 1994.

3. The challenge in the petition is to the notification under Section 4 issued on May 04, 1989, declaration under Section 6 and also to the award not being passed within the prescribed period of two years under the provisions of Section 11-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013'). It is further prayed by the petitioner-Society that directions be issued to the respondent no.3 to remove the boundary wall over Field Khasra No.112/6 and to restore the possession to its members or in the alternative compensation be ordered as per provisions of Section 24(2) of the Act of 2013.

4. Shri N.H. Shams, learned counsel for the petitioner in support of aforesaid prayers would urge that after the lands were purchased by the petitioner-Society, same were converted to non-agricultural use and after the plots were laid, same were transferred in the name of the members of the petitioner-Society who in the interest of rights of its members has approached this Court. According to the counsel for the petitioner, the acquisition of lands for public purpose is not established as except erecting a boundary wall, the lands are not put to any use. In spite of there being an award in relation to the lands in question, the amount of compensation is not deposited in the account of the plot holders of the petitioner-Society. According to him, since the award was not passed within the time stipulated as prescribed by Section 11-A of the Act of 2013, the award is unsustainable. He would claim that the award under Section 11 of the Act of 2013 has to be passed within two years from the date of publication of the notification under Section 6 of the Act of 1894. In addition, the counsel for the petitioner would urge that since the compensation was not paid, the provisions of Section 24(2) of the Act of 2013 would be attracted and as such by declaring that the earlier acquisition has lapsed, the respondents should be directed to take recourse to fresh acquisition in accordance with the provisions of the Act of 2013.

5. While countering the aforesaid submissions, Shri H.R. Dhumale, Assistant Government Pleader appearing for the respondent nos.1 and 2 so also Shri Vandan Gadkari, counsel for the respondent no.4-APMC would urge that the petition not only suffers from inordinate delay and laches but also same involves various disputed questions of fact. It is also claimed that in the backdrop of submissions of the petitioner, it has to be inferred that the petitioner lacks locus to question the acquisition. Further submission is, the acquisition proceedings have already attained finality as the petitioner has chosen to take recourse to reference proceedings under Section 18 of the Land Acquisition Act, 1894. In this background, it is claimed that the writ petition is liable to be dismissed.

6. We have appreciated the rival claims.

7. It is the case of the petitioner-Society that vide sale-deed dated January 03, 1986 the land in question was purchased by it and vide order of the Tahsildar dated January 30,

1993, the same was put to non-agricultural use. According to the petitioner-Society, a layout was carved out and plots were sold in between 1986 to 1990. It is claimed that the names of the plot holders are mutated in the record of Municipal Corporation. On one hand, it is claimed that the permission to change the user of the land was granted on January 30, 1993 whereas on the other hand the petitioner-Society is claiming that the plots were sold to its members in between 1986 to 1990. Neither the members of the petitioner-Society are before this Court nor any authorization is produced on record thereby authorizing the petitioner-Society to prefer the writ petition. The fact remains that in relation to the land in question, the notification under Section 4 of the Act of 1894 was gazetted in 1989. Subsequent thereto, notification under Section 6 of the Act of 1894 came to be passed on July 02, 1992. The petitioner-Society after the aforesaid award was passed, has raised an objection dated October 31, 1994 thereby praying that the acquisition proceedings be dropped or in alternative payment of higher compensation be ordered.

8. In the aforesaid backdrop, if we appreciate the case of the petitioner-Society whereby it is claimed that the acquisition proceedings be declared as illegal, we are unable to convince ourselves because the petitioner-Society has acquiesced itself by accepting the award delivered under Section 11 of the Act of 1894 on August 25, 1994 and challenging the same vide Objection dated October 31, 1994 for grant of enhanced compensation. It is informed that the reference preferred under Section 18 of the Act of 1894 is pending adjudication.

9. In this background, if we appreciate the position of law as reflected in the judgment of **Swaika Properties (P) Ltd. & Another Versus State of Rajasthan & Others** [(2008) 4 SCC 695], it can be easily inferred that the land in question is acquired for public purpose viz. Construction of APMC market yard. The fact about pendency of reference under Section 18 of the Act of 1894 and the submission of the counsel for the petitioner that the land in question is already secured by fencing sufficiently speaks of possession being taken over. As such, the petitioner-Society is not in possession which has been admittedly taken over. In this backdrop, we have to infer that the petitioner-Society is trying to question the award dated August 25, 1994 in 2024, i.e. almost after a period of thirty years without there being any plausible and convincing explanation. As such, the claim put forth in the writ petition is not only hopelessly time barred but also suffers from delay and laches.

10. In **Swaika Properties (P) Ltd. & Another** (supra), the Apex Court has observed in paragraphs 15, 17, 18 and 19 as under:-

‘15. Insofar as the contention regarding the possession having not been taken is concerned, the respondents submit that the possession of the land in dispute has already been taken. Be that as it may, the award in respect of the land having become

final, the State Government is vested with the powers to take possession of the land concerned and, therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before the filing of the writ petition. Moreover, the appellants sought enhancement of compensation by filing reference application under Section 18 of the Land Acquisition Act, 1894. Simultaneously, the appellants filed writ petition before the High Court of Rajasthan after passing of the award.

17. Similarly, in State of Rajasthan v. D.R. Laxmi following the decision of this Court in Municipal Corpn. Of Greater Bombay it was held: (D.R. Laxmi case, SCC p.452, para 9)

‘9. ... When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.’

18. To the similar effect is the judgment of this Court in Municipal Council, Ahmednagar v. Shah Hyder Beig wherein this Court, following the decision of this Court in C.Padma v. Dy. Secy. to the Govt. of T.N. held: (shah Hyder case, SCC p.55, para 17)

‘17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C.Padma v. Dy. Secy. to the Govt. of T.N.)’

19. In the present case also, the writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly, the orders of the learned Single Judge and that of the Division Bench are affirmed to the extent of dismissal of the writ petition and the special appeal without going into the merits thereof. This appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs.”

11. Similarly, this Court in Mohmadbhai Miyabhai & Others Versus State of Maharashtra & Others [2000(1) Mh.L.J. 729] in paragraph 20 has expressed as under :-

“20. Once the land acquisition proceedings are completed, the acquired land has been taken over and the award has been passed, challenge to the land acquisition proceedings or the award cannot be entertained. When the writ petitions were

filed, some of the petitioners were in possession of their respective lands. However, as on today even the possession of the lands has been handed over and none of the petitioners remained in possession of the acquired land except Smt.Rukhminibai who continues to be in possession of 20 gunthas of land. The Supreme Court in the case of **Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and others** (1996) 11 SCC 501 held, inter alia, that once the land acquisition proceedings are completed, the land vests in the State, free from all encumbrances and proceedings become final, and therefore, they are not open to challenge in a writ petition filed under Article 226 of the Constitution of India on the ground of non-compliance with any statutory requirement(s). the remedy available in such cases to the aggrieved landlord is only to claim higher compensation by filing a reference under section 18 of the Land Acquisition Act. Civil Application has been filed in Writ Petition No. 905 of 1986 raising additional grounds of challenge to the impugned award in para 16A, which we have already dealt with. It has also been contended by way of the said amendments that the petitioner has learnt that the respondent No.3 CIDCO has changed its policy and awarded 30 to 35% of the land to the original owners. It is also contended that the respondent No.3 has recommended withdrawal of acquisition from survey No.16, to the State Government. We are afraid, we cannot take cognizance of these allegations and in any case, the petitioners can approach the respondent No.3 for claiming similar benefits and it is for the respondents to decide, if such representations are made, on their own merits."

12. As such, it has to be held that the acquisition proceedings under the Land Acquisition Act, 1894 has attained finality. In that view of the matter, it is not open for the petitioner-Society to question the acquisition proceedings by resorting to the writ jurisdiction of this Court under Article 226 of the Constitution of India. Once it is observed that the petitioner-Society having lost the possession and the acquisition proceedings having attained finality, it is not open for it to take recourse to the provisions of Section 11-A of the Act of 1894 so as to seek declaration that the acquisition proceedings are illegal. The petitioner-Society in such an eventuality having already taken recourse to the provisions of Section 18 of the Act of 1894 cannot claim that the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 should have been taken recourse to.

13. The Apex Court in the matter of **Delhi Development Authority Versus Jagan Singh & Others**, decided on February 17, 2023 in Civil Appeal No.943 of 2023 basing its judgment on the judgment in **Indore Development Authority Versus Manoharlal & Others** [(2020) 8 SCC 129] has specifically observed that once the possession is taken

over, it cannot be said that there is lapsing under Section 24(2) of the Act of 2013. Paragraphs 365 and 366 of the judgment in **Manoharlal & Others** (supra) reads thus :-

“365. Resultantly, the decision rendered in Pune Municipal Corporation [Pune Municipal Corporation v. Harakchand Misirimal Solanki, MANU/SC/0055/2014 : (2014 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corporation [Pune Municipal Corporation v. Harakchand Misirimal Solanki, MANU/SC/0055/2014:(2014 3 SCC 183] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [Shree Balaji Nagar Residential Assn. v. State of T.N., MANU/SC/0794/2014 : (2015) 3 SCC 353] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra [MANU/SC/0095/2018 : (2018) 3 SCC 412], the aspect with respect to the proviso to Section 24(2) and whether ‘or’ has to be read as ‘nor’ or as ‘and’ was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1 Under the provisions of Section 24(1)(a) in case the award is not made as on 01.01.2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2 In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3 The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4 The expression ‘paid’ in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be

entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the 'landowners' as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 01.01.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 01.01.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

The Apex Court has specifically interpreted the word 'or' used in Section 24(2) of the Act of 2013 between possession and compensation and has observed that the same has to be read as 'nor' or as 'and'. As such, in case the possession has been taken over and the

compensation has not been paid, then there is no lapsing of reservation.

14. In the present case, it is an admitted position that the respondents have taken over the possession and had already put the fencing. Apart from above, the remedy under Section 18 of the Land Acquisition Act, 1894 having been invoked by the petitioner-Society, the presumption is that the same has been done by depositing the compensation before the appellate Court.

15. In our opinion, the writ petition is not only hopelessly time barred but also lacks merit. Resultantly, the same is as such dismissed. Rule stands discharged. No costs.